

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RULES APPLICABLE TO APPEALS OF POST
OFFICE CLOSINGS

Docket No. RM2011-13

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(October 3, 2011)

In Order No. 814 (August 18, 2011), the Commission initiated this docket to “propose ... revisions to its rules governing appeals of [P]ost [O]ffice closings and consolidations to make them more accurately reflect current practices and more user friendly.” The Order sets today as the date by which interested parties were to provide comments. The Postal Service hereby submits its Initial Comments.

Introduction

On August 18, 2011, the Postal Regulatory Commission issued Order No. 814 and established PRC Docket No. RM2011-13, entitled “Rules Applicable to Appeals of Post Office Closings.” On August 25, 2011, the Commission issued Order No. 823, proposing further conforming changes to the proposed rules in Order No. 814. The rulemaking concerns revisions to the rules governing the discontinuance of Post Offices, stations, and branches. In establishing the instant docket, the Commission requested comments from the Postal Service and other members of the postal community. See Order No. 814, at 17.

As an initial matter, the Postal Service expresses its appreciation to the Commission for initiating this rulemaking. The Postal Service is favorably disposed to

support efforts that streamline and simplify procedures, and, in the Postal Service's view, a number of the proposed revisions are well aimed at achieving that objective.

I. Definition of "Post Office"¹

The Commission proposes that the term "Post Office" be defined as "a Postal Service operated retail facility." The Commission proposes this definition in an apparent attempt to support its position that 39 U.S.C. § 404(d) grants the Commission jurisdiction to consider station and branch discontinuance appeals, an expansion of its jurisdiction limited to Post Office discontinuance appeals.

The Postal Service opposes this proposal. In the Postal Service's view – a view supported by the plain language of the pertinent statute, legislative history and federal courts – a Post Office is distinct from a postal branch or a postal station.² Based on this understanding of the term "Post Office," the Postal Service takes the position that the Commission's jurisdiction under 39 U.S.C. § 404(d) does not extend to station or branch discontinuance appeals. The Postal Service has previously presented its position on this matter in great detail, and only summarizes it briefly below.

¹ The term "Post Office" is intellectual property of the United States Postal Service and should be capitalized.

² The Commission definition is overbroad in another sense. Understood in historical context, section 404(d) when introduced and passed by Congress in 1975-76 was about preserving the jobs of postmasters, most of whom at that time had been appointed by the President after Congressional nomination. Assuming the Commission intends to include stations and branches in these rules—despite its lack of legal authority to expand a statutory grant of subject matter jurisdiction and knowing that the Postal Service does not agree and will therefore maintain its own rules that exclude stations and branches—the definition of "Post Office" should simply refer to "Post Offices, stations and branches operated by postal employees."

There is a longstanding difference in understanding between the United States Postal Service and the Commission regarding 39 U.S.C. § 404(d).³ That section of law is commonly understood as establishing a limited customer right to appeal a Post Office discontinuance decision by the Postal Service to the Commission; on appeal, the Commission may either affirm the Postal Service decision or remand it; review is based exclusively upon the administrative record supporting the discontinuance decision. The Commission's interpretation of Section 404(d) is not supported by the language and intention of the statute. The Commission's interpretation of Congress' grant of subject matter jurisdiction in Section 404(d) reflects the Commission's consistent expansion of that grant since shortly after it became law in 1976, and is at odds with the Postal Service's single and consistent interpretation that it has understood and applied since Post Office discontinuance regulation was introduced by its sponsors. The short version of the agencies' difference derives from the Postal Service's understanding that Congress used the term "Post Office" in the same technical sense that it has for well over 100 years when it passed Section 404(d), while the Commission instead concludes that Congress ignored the history of its own action and—without overtly signaling any change in its utilization⁴—instead used that term in the various other senses the Commission has applied over the last thirty plus years.

Based on this rulemaking and Commission decisions in A-series appeals, the Postal Service infers that the Commission believes it has the authority to expand its

³ The *Postal Accountability and Enhancement Act (PAEA)*, Public Law 109-435 (December 20, 2006), incorporated former subsection 404(b) into subsection 404(d) with no substantive change beyond new application of the mailbox rule to the previous 30-day limit within which appeals of final determinations to discontinue a Post Office must be received at the Commission.

⁴ As noted *infra*, Senator Randolph, author of the legislative change that became law, actually signaled the absence of any change from the technical use of "Post Office."

jurisdiction to exercise oversight in connection with appeals of decisions to discontinue any postal retail facility, including stations and branches. In the context of the A-series dockets, at first the Commission appeared hesitant to rule on the jurisdictional issue, and it focused its decisions on other issues. See Order Granting Motion to Compel, PRC Order No. 688, PRC Docket No. A2011-4 (March 2, 2011) at 3 (“the Commission stresses that this Order neither represents a ruling on the merits of the jurisdictional issue, nor whether the discontinuance is subject to section 404(d)”); Order Granting Motion to Compel, PRC Order No. 620, PRC Docket No. A2011-1 (December 22, 2010) at 2 (same). But more recently, the Commission has addressed the jurisdictional issue more directly, asserting a jurisdictional authority to hear the appeal of any postal retail facility, including stations and branches. See Order Denying Application for Suspension, PRC Order No. 762, PRC Docket No. A2011-19 (July 19, 2011) at 2 (“The Commission rejects this argument [that 39 U.S.C. 404(d) does not apply to a station discontinuance appeal], as it has done in numerous prior proceedings”).

This rulemaking echoes the position taken by the Commission in the more recent A-series dockets. In support of its proposal to expand the definition of “Post Office,” the Commission offers only its representations that the new definition “reflects the plain meaning of the term ‘[P]ost [O]ffice’ as it is used in section 404(d)(5),” and that it has always understood the term “Post Office” to include stations and branches. The Commission does not cite any legislative history or other precedent in support of its proposal, and it does not address the extensive legislative history and federal case law cited in support of the Postal Service’s understanding—and that of the judicial and legislative branches of the United States government—of the term “Post Office.” See

Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010). In the Postal Service's view, the Commission's proposed definition of "Post Office," and the corresponding expansion of its jurisdiction over postal retail operations, suggests a Commission substitution of its own judgment over postal operations for that of the Postal Service, the agency with primary oversight over management of postal business, hence the agency whose views are accorded any judicial deference.

Congress has used the term "Post Office" in its technical sense for well over a century, and it has done so while recognizing the need for postal officials to establish facilities, including Post Offices, stations and branches, and also to discontinue them. The authority of Congress "to establish [P]ost [O]ffices," U.S. Const. art. I, §8, cl. 7, has been consistently delegated to the Postmaster General since the establishment of the Nation's postal system.⁵ Thus, the act establishing the general Post Office and post roads of the United States gave the Postmaster General authority "to appoint an assistant, and deputy postmasters, at all places where such shall be found necessary." Each deputy postmaster was directed to keep an office "in which one or more persons shall attend at such hours as the Postmaster General shall direct, for the purpose of performing the duties thereof."⁶ Seven years later, Congress proclaimed in more explicit terms:

That there be established at the seat of government of the United States a General Post-office, under the direction of a Postmaster General. The Postmaster General shall appoint an assistant, and such clerks as may be necessary for performing the business of his office; he shall establish

⁵ See, discussion in *Ware v. United States*, 71 U.S. 617, 630-633 (1866).

⁶ Act of February 20, 1792, ch. 7, §§3, 7, 1 Stat. 234; Act of May 8, 1794, ch. 23, §3, 1 Stat. 357.

post-offices, and appoint postmasters, at all such places as shall appear to him expedient, on the post roads that are or may be established by law ...⁷

As contained in later revisions of the postal statutes, similar language was supplemented by provisions specifically concerning the discontinuance of Post Offices.⁸ A general revision and consolidation of the postal statutes in 1872 specified that the Postmaster General should "establish and discontinue [P]ost [O]ffices," that he should "establish [P]ost-[O]ffices at all such places on post-roads established by law as he may deem expedient," and that he might discontinue any office "where the safety and security of the postal service and revenues are endangered from any cause whatever, or where the efficiency of the service shall require such discontinuance."⁹

Indeed, even without specific statutory language, the authority to establish Post Offices and other facilities carried with it by implication the power to discontinue those postal facilities, except where expressly limited by statute. As the Supreme Court explained, the authority to discontinue facilities is essential for the efficient operation of the national postal system:

... [T]he power to discontinue [P]ost-[O]ffices is incident to the power to establish them, unless there is some provision in the acts of Congress restraining its exercise. ... Strong necessity exists that the power of the Postmaster-General in this behalf should be upheld so long as the offices are established by his authority. New facilities for transportation may call for change of location, or it may appear that the location was unadvisedly selected, either from want of proper information or through misrepresentation. Some of these causes must be constantly operating in

⁷ Act of March 2, 1799, ch. 43, §1, 1 Stat. 733. See also, Act of April 30, 1810, ch. 37, §1, 2 Stat. 593; Act of March 3, 1825, ch. 64, §1, 4 Stat. 102.

⁸ In response to current events, the Act of February 28, 1861, ch. 61, 12 Stat. 177-178, allowed the Postmaster General to discontinue service and Post Offices on a post route "whenever ... the postal service cannot be safely continued, or the [P]ost [O]ffice revenues collected, or the postal laws maintained, ... by reason of any cause whatsoever."

⁹ Act of June 8, 1872, ch. 335, §§ 6, 61, 91, 17 Stat. 285, 292, 296.

a sphere of action so vast and diversified as that of the Post-[O]ffice establishment.¹⁰

Codified in more contemporary terms, former 39 U.S.C. §701¹¹ empowered the Postmaster General to "establish [P]ost [O]ffices as he deems expedient," discontinue Post Offices "when the efficiency of the service requires or revenues are endangered from any cause," and consolidate Post Offices with the restriction that a Post Office could not be discontinued at a county seat. Former 39 U.S.C. § 705 permitted the Postmaster General to establish stations or branches "within the delivery limits of a [P]ost [O]ffice," or within 20 miles of a town of 1,500 or more inhabitants in which the principal office was located. This authority could not be used as a basis for discontinuing an established Post Office.

The Commission should recognize Section 404(d) for what it says: Congress used the term "Post Office" in its technical sense, in full accordance with its longstanding and historically specific use of the term. The legislative history plainly supports the fact that Congress knowingly used the term "Post Office" in its technical sense in Section 404(d) as in many other statutes. The federal court decisions that considered the dispute between the Commission and Postal Service agreed with the Postal Service interpretation, one that is consistent with the reasoned apportionment of management responsibility and the accountability and transparency of management decisions. See *Knapp v. United States Postal Service*, 449 F. Supp. 158 (E.D.Mich. 1978); *Wilson v. United States Postal Service*, 441 F. Supp. 803 (C.D.Cal. 1977); *Shepard Community Association v. United States Postal Service*, Civ. No. C2-82-425 (S.D.Ohio 1985). As such, the weight of authority supports the position that appeal

¹⁰ *Ware v. United States*, *supra*, 71 U.S. 632-633.

¹¹ Pub. L. No. 86-682, 74 Stat. 582 (September 2, 1960).

rights under Section 404(d) exist only for the consolidation or closing of an independent Post Office, and the Commission should not attempt to expand its jurisdiction beyond the intentions of Congress by altering the definition of “Post Office.” Accordingly, the Postal Service opposes this rulemaking to the extent that it expands the Commission’s jurisdiction to appeals of stations, branches, and any other subordinate retail units. The Postal Service accordingly urges removal of proposed changes that give effect to this expansion of jurisdiction, as shown in the Appendix to these comments.

II. Notice

By attempting to establish pre-appeal discontinuance notice procedures for the Postal Service, the Commission’s Proposed Rule 3025.3 seeks to impose new burdens on the Postal Service that exceed Commission authority. This proposed rule addresses the notice required both when the Postal Service issues a decision proposing a discontinuance proposal, and later should it issue a final determination. The Postal Service is particularly concerned with subsection (c) of Proposed Rule 3025.3, which applies to suspended Post Offices and would require the Postal Service to provide notice by First-Class Mail of both the proposal and final determination to all delivery and retail customers of a suspended Post Office. The Postal Service does not favor the Commission’s proposed rule regarding notice in Proposed Rule 3025.3, because it exceeds the scope of the Commission’s authority and attempts to impose an excessive, unnecessary and unwarranted burden on the Postal Service.

While the Commission may be charged with a policymaking function in other areas, such as in postal ratemaking under 39 U.S.C. § 3622 or in the review of “nonpostal services” under 39 U.S.C. § 404(e)(3), it has only a limited adjudicatory role

in the review of Post Office discontinuance actions. The Postal Service is the federal entity tasked with the responsibility “to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services,” 39 U.S.C. § 403(b)(3), and “to determine the need for Post Offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed,” *id.* at 404(a)(3).¹² The Postal Service is the sole federal agency tasked with administering the notice and comment procedures of Section 404(d) prior to closing or consolidating any of a subset of its facilities: Post Offices. The Commission’s role, meanwhile, is limited to reviewing the Postal Service’s Post Office discontinuance determinations pursuant to the standards of review applicable to court review of agency action under the Administrative Procedure Act. *Compare* 39 U.S.C. § 404(d)(5) *with* 5 U.S.C. § 706. The Commission’s authority is also limited to either affirming the Postal Service’s decision or remanding it for further consideration in accordance with Section 404(d); it cannot modify the Postal Service’s policy decision as to the substantive merits of closing or consolidating a Post Office.

By proposing creation of new requirements for the notice and comment procedures applicable within Section 404(d) discontinuance actions, the Commission intrudes into an area reserved exclusively in the Postal Service’s domain. As explained above, the Commission has a limited role under Section 404 that is not triggered until the appeal of a Postal Service discontinuance decision. It has no statutory basis for

¹² The Commission has no jurisdiction over the Postal Service’s compliance with Sections 403(b)(3) or 404(a)(3), except as under Section 404(d)(5).

involving itself in the notice and comment procedures – or any other Section 404 procedures – occurring before a Section 404(d) appeal arises.

Even if the Commission had a statutory basis for creating rules regarding pre-appeal Post Office discontinuance procedures, the Postal Service would object to Proposed Rule 3025.3(c) because it imposes an excessive and unnecessary burden on the Postal Service. Although subsections (a) and (b) of Proposed Rule 3025.3 appear to describe the current notice procedures undertaken by the Postal and do not appear to impose an additional burden on the Postal Service, Proposed Rule 3025.3(c) would require notice procedures beyond those required by statute.

In Rule 3025.3(c), the Commission proposes requiring the Postal Service to provide notice by First-Class Mail of both the proposal and final determination to all delivery and retail customers of a suspended Post Office. This proposed rule largely duplicates existing postal regulations, which already require the mailing of a questionnaire to delivery customers served by a post office, along with a *Summary of Postal Service Retail Facility Change Regulations (Summary)*. See Handbook PO-101 § 241.12; see also Exhibit 1 (questionnaire and summary). The *Summary* includes a short synopsis of the procedures involved in retail discontinuance, and describes the process for appealing a final determination of a Post Office discontinuance. For suspended offices, postal regulations provide that “customers formerly served by a postal service-operated retail facility in suspension status should receive the same level of notice as they would have if the facility were not in suspension status, including notice by mail served.” In the Postal Service’s view, sending two additional notices of the posting of the proposal and final determination by First-Class Mail is not necessary

because delivery customers already receive the *Summary* by mail. Moreover, the additional steps proposed by the Commission are in essence duplicative of the prominent posting of the proposal, final determination, and administrative record at affected postal facilities, which includes the retail facility under study, the retail facility proposed to serve as the supervising facility, and any facility likely to serve a significant number of customers of the retail facility under study, provides effective notice and complies with the notice established by applicable statutes and regulations. See Postal Service Handbook PO-101 § 352.1 (listing facilities included in term “affected facilities”). Such notice procedures have proven effective for decades to customers while withstanding review in hundreds of Commission reviews. These notices are unlikely to be ignored, particularly because the proposal is posted for 60 days and the final determination for a month, and are often posted in Post Offices where customers only receive mail via P.O. Box delivery. The proposed rule would also be highly burdensome. In some cases, requiring First-Class Mail notification to all participants could involve scores of parties. The Postal Service does not understand the reasoning behind the Commission’s proposal of elevated notice requirements for suspended Post Offices. And compliance with the proposed rules for suspended Post Offices, which would require First-Class Mail notice to retail customers, would be difficult because often the Postal Service does not necessarily know the identities or contact information of retail customers.¹³

¹³ This proposal also assumes that the Postal Service has a solution for a problem that has gained recent visibility in PRC Docket No. N2011-1: the Postal Service has no way of knowing whether respective customers make effective use of alternate access channels, whether they choose to use postal operated retail facilities located near workplaces, or which among nearby classified or contract retail units they find both necessary for use and which mesh most conveniently with other normal trips or transportation in their lives. Use of a blunt tool such as mail notice to customers residing in a five-digit ZIP Code area has

The Commission has no statutory basis for imposing new pre-appeal notice requirements on the Postal Service, and the proposed notice rules would create an excessive and unnecessary burden for the Postal Service. Accordingly, the Postal Service urges that the Commission refrain from straying beyond its limited jurisdictional role. The Postal Service accordingly requests that the Commission withdraw Proposed Rule 3025.3 and all other proposals that address discontinuance procedures occurring prior to any appeal, or otherwise outside the context of an appeal proceeding.¹⁴

III. Suspending Implementation of the Final Determination

In Rule 3025.30, the Commission proposes automatic suspension of a final determination's implementation during the pendency of an appeal for both Post Offices and stations / branches. Under longstanding and current practice, implementation of a Post Office final determination is automatically suspended during the pendency of an appeal; while a discontinuance follows automatically to conclusion no earlier than 60 days after posting of the final determination, those processes are automatically tolled by the existence of an appeal. But the same is not true for stations / branches. See 39 C.F.R. § 241.3(g)(3)(i) (providing for discontinuance during the pendency of an appeal "only by the authority of the Vice President, Delivery and Post Office Operations"). This measure accommodates an operational challenge seen only rarely. If, for example, the Postal Service has coordinated the conduct of a discontinuance study with a forthcoming lease termination, it has found itself where a lease term ends approximately

therefore been limited in postal regulations to a single occasion: initiation of a discontinuance study. The Commission accordingly lacks a compelling rationale and legal authority to compel expanded use of this tool.

¹⁴ Should the Commission finalize a rule established *ultra vires*, any decision relying upon its application would similarly be *ultra vires*.

90 days after a final determination is posted. The Postal Service must either negotiate a short term lease extension or formally suspend operations, thus presenting itself with both management challenges and customer confusion. Hence, guided by actual experience, 39 C.F.R. § 241.3(g)(3)(i) creates a practical alternative: one very senior postal official is authorized to let the formal discontinuance go forward as scheduled. Were such an office's final determination subsequently remanded, its operational status would likely remain in suspension as postal officials examined and acted upon the reasons for the remand.

The Postal Service accordingly opposes the Commission's proposal that suspension of a final determination's implementation be automatic and inexorable. Its experience is consistent with the actual ambit of Section 404(d). The Commission's proposal accordingly manifests the potential for Commission interference with management of the postal retail network, labor relations, and contractual obligations.

Operation of the retail network requires planning and management involving leases, labor agreements, and other contracts. In some cases, the Postal Service will negotiate a particular contract to terminate soon after the completion of discontinuance actions, but an appeal coupled with an application for a stay could alter the timing of discontinuance procedures. If implementation of the final determination is automatically suspended upon the filing of an appeal, thereby preventing the discontinuance of operations at a particular facility, the Postal Service could, in rare circumstances, find itself in violation of a lease or other agreement. Thus, discretion over final determination implementation may be the only available option for the efficient management of postal operations, and the limitation of contractual liability.

Changes in the timing of discontinuance actions could also cause serious complications in employment and Reduction in Force (RIF) procedures. The Postal Service believes that requiring automatic suspension as the Commission proposes could widen abuse of the appeal process to delay and interfere with RIF processes. Litigants might try to use the appeal process as a means of extending the operation of a Post Office to forestall an impending employment action or for bargaining leverage. The purpose of the statute, however, is to review the discontinuance of a Post Office when initiated by a person served by that Post Office. Allowing the Postal Service limited discretion over final determination implementation in Post Offices will thereby protect the Commission's discontinuance appeal procedures from abuse. Accordingly, the Postal Service requests that the Commission maintain the discretionary nature of final determination implementation suspension by replacing "is" with "may be" in Proposed Rule 3025.30. Such action by the Commission also better comports with statutory language that recognizes an application for suspension of formal discontinuance may require adjudication as the specific situation may require.

IV. Administrative Record

The Commission proposes to change the definition of "administrative record" to include "all documents and materials created by the Postal Service or made available by the public to the Postal Service for its review in anticipation of the action for which review is sought." Under current Postal Service regulations, the administrative record is limited to "evidence considered by the Postal Service in making its determination" and explicitly excludes "evidence not previously considered by the Postal Service." 39 C.F.R. § 3001.112. While the existing rules thus track the statute closely, the

significance of the proposal is unclear. It appears susceptible of encompassing internal documentation relating to labor and employee relations, contract administration, materials prepared in consideration of forthcoming employee and contract decisions, and coordination of a discontinuance with any other operational details necessary for the routine conduct of postal operations and business. These materials do not support a discontinuance decision even if by some measures one can assert their existence has some causal relationship to what becomes a discontinuance decision. Such materials are also of the type that might be eligible for withholding from mandatory disclosure in response to a routine Freedom of Information Act (FOIA) request; their inclusion in the administrative record would thus insert a range of new issues into discontinuance studies that are wholly unwarranted given that they are not germane to reasons for an actual discontinuance decision. Moreover, the presence, absence or existence of such materials has never been the source of a dispute, material or otherwise, in the Commission's review of discontinuance decisions.

The Postal Service thus opposes the Commission's proposal to change the definition of "administrative record" so as to be inconsistent with the statute. The Commission should therefore retain its existing definition, which has worked fine for decades.

First, the Commission's proposal conflicts with postal regulations, which also track the statute closely, that limit the administrative record to the materials considered by the Postal Service in making its final determination. 39 U.S.C. § 404(d)(5); 39 C.F.R. § 241.3; 39 C.F.R. § 3001.112. In particular, Postal Service regulations specifically exclude "evidence not previously considered by the Postal Service." It serves the

interests of comity and administrative simplicity to preserve a single definition of the term in both agencies' regulatory systems.

Existing definitions serve the statutory scheme in another way, as well. The Commission's role under Section 404(d) is that of a court acting in an appellate capacity, a straightforward analysis of whether the Postal Service properly undertook a transparency exercise that consists of a notice and comment proceeding: Did the Postal Service tell customers what it planned to do and why, did it elicit from customers their interests and concerns, and did all of the information thereby collected get proper consideration in reaching a final decision? The Commission's role can thus be paraphrased as: did the Postal Service encompass (fence in) all of the information that it should have, and did its final decision make sense in light of that information. What is key here is that everything outside the fence is excluded from consideration. Neither the Postal Service nor customers can import entirely new matters for consideration the first time only on appeal. The final decision of the Postal Service must be affirmed or remanded based upon an examination of the administrative record and application of three legal tests (substantial record evidence, arbitrary and capricious, and procedures required by law).

Second, the Commission's proposed definition would include materials submitted by the public for the Postal Service's review during a discontinuance study. But this modification to the definition of "administrative record" – and departure from the definitions contained in the statutes and regulations cited above – is not necessary because under current procedures, the Postal Service already considers all materials submitted by the public in accordance with 39 C.F.R. § 241.3. See, e.g., 39 C.F.R. §

241.3(d)(4)(i) (“No written information or views submitted by customers may be excluded [from the administrative record]”). Allowing new information from customers would violate the basic structure that defines and limits appellate jurisdiction, while if it has previously been provided it also appears in the administrative record. The current approach thus has the additional value of precluding a customer from hiding a valid concern and then raising it for the first time on appeal.

Third, as described in Section II above, applicable statutes and regulations limit the Commission’s jurisdiction to certain elements of Post Office discontinuance appeals, and they do not confer upon the Commission authority over postal management’s practices occurring before or otherwise outside the context of an appeal. The Commission’s proposal to establish regulations regarding the record considered by the Postal Service in making a discontinuance determination concerns a pre-appeal Postal Service activity, and is outside the Commission’s jurisdiction.

Fourth, the Postal Service opposes the Commission’s proposed definition of “administrative record” because it fails to exclude protected work product, privileged documents, or materials that implicate privacy rights.

The Commission includes in Order No. 814 (at 4) a justification for expanding the definition of “administrative record” it finds in the existence of appeals regarding stations or branches whose discontinuance studies commenced pursuant to the procedures the Commission studied closely in its advisory opinion proceeding regarding the Station and Branch Optimization and Consolidation Initiative, 2009 (SBOC), PRC Docket No. N2009-1. Any perceived “problem” with those discontinuance studies, for which it lacks subject matter jurisdiction anyway, will in all likelihood resolve itself prior to any

publication of these final rules. The Postal Service began providing records for stations and branches only after the Commission requested them as a matter of comity. Yet the Order's reference to apparent delay, and how that plays into its new proposed definition of "administrative record," goes unexplained. Despite its severe misgivings, the Postal Service has since that time been providing administrative records underlying station / branch discontinuance decisions on the schedule the Commission sets.

The Commission includes in its new definition of "Record on review" (3025.20) "facts of which the Commission can properly take official notice." Order No. 814 at 22, Rule 3025.20(5). This proposal is contrary to the statute, which specifies: "The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination." 39 U.S.C. § 404(d)(5) (second full sentence). So if the Postal Service did not rely upon such facts, nor may the Commission. The Commission manages to deepen Postal Service concern by indicating in its commentary an example of the kind of facts it would like to take official notice of: "census data." Order No. 814 at 15.

The Postal Service made eminently clear to the Commission in testimony and on brief in SBOC that it does not examine or distinguish its customers based on ethnic, racial or age criteria, or any other parameter that census data may permit.¹⁵ In the

¹⁵ The Postal Service cannot claim surprise that the Commission nonetheless wants to go down the census data path; its public representative in Retail Access Optimization Initiative, PRC Docket N2011-1, for example, as it did in SBOC has once again sponsored testimony relying upon census data as a window through which to claim that the Postal Service is somehow engaged in inappropriate discrimination in merely nominating respective facilities on measures of walk-in revenue for the conduct of discontinuance studies. Those studies, as the Commission might recognize in this docket, also do not examine customer access to postal services based on inappropriate criteria, instead looking to how customers actually use respective facilities. The Postal Service submits that studying actual use of a facility gives a far better analytic of whether that facility is one that can or cannot reasonably be discontinued.

Postal Service view, that approach opens the door to making decisions based on prohibited criteria. The Postal Service universal service obligation also does not distinguish customers on such criteria. Hence the legal foreclosure upon Commission importation of data on which the Postal Service final agency discontinuance decision does not rely would appear to be a blessing in disguise.

The Postal Service favors a definition of “administrative record” that is consistent with the definition provided in 39 U.S.C. § 404(d), 39 C.F.R. §§ 241.3, 3001.112, and the Postal Service Handbook PO-101. Accordingly, as shown in the Appendix to these comments, the Postal Service proposes the definition of “all evidence considered by the Postal Service in making its determination.” Consistent with this approach, the Postal Service also proposes deletion of Proposed Rule 3025.20(5), which would allow “facts of which the Commission can properly take official notice” to be included in the administrative record.

It appears that the Commission is struggling with the line between, on the one hand, the evidentiary record (“administrative record”) on which the Postal Service relies, which as a matter of the organic statute the Commission may not expand; on the other hand, the Commission seems to confuse this straightforward concept with the documents and pleadings it receives during the conduct of the appeal. The latter will necessarily contain many things the Postal Service will not have relied upon, although a great deal of substantive overlap between the two sets of materials should be expected.

The Commission is free as a legal matter to circumscribe what it is willing to accept in the proceeding that constitutes its review of an underlying agency decision. It

has done so by prescribing the form and content of respective pleadings, primarily focused upon customers who may be unfamiliar with legal process.

The Postal Service is obliged as a matter of law and its own interests to limit the administrative record as the statute requires. It collects only what it relies upon and furnishes that to the Commission when an appeal is filed. But what becomes part of the Commission's docket record is much less of a Postal Service concern. The definitions of "Record on review" (3025.20) and "Administrative record" (3025.1(b)) both seem to intrude on the Postal Service prerogative to create the record on which it relies. (Of course, if the Postal Service were to rely upon some document not in that record to support its decision, that would be problematic; but that has not been seen as a problem.)

The Commission might therefore profitably consider reworking these proposed rules so as to improve the distinction upon the agencies' respective responsibilities. And if the Commission believes that something is missing from administrative records generally, it should (if it has not previously) provide that suggestion to postal officials. While census data will not be imported into the administrative record, as explained, the Commission can presumably use census data as a way of commenting upon the Postal Service final agency decision so long as it is not used to justify a remand.

V. Appeal Rights

The Commission proposes to attach appeal rights to the discontinuance of any Postal Service operated facility. The Postal Service understands that Section 404(d) limits appeal rights to the discontinuance of a Post Office, and grants no appeal rights for the discontinuance of a station, branch, or other subordinate unit. Accordingly, the

Postal Service opposes the Commission's proposed rules regarding the expansion of appeal rights because they are inconsistent with the governing statute. Although the new rules governing discontinuance actions provide for similar treatment of Post Offices and stations / branches, as explained above the Commission cannot extend appeal rights to the discontinuance of stations, branches, or other subordinate units. As such, the Postal Service expressly reserves its discretion to challenge the Commission's appellate jurisdiction over facilities other than Post Offices.

Proposed Rule § 3025.14(a) states that "[a]ny person ... with a demonstrable interest in the closing or consolidation may participate in an appeal." The Postal Service opposes this provision since it also contradicts the statute by allowing labor, nonprofit or civic organizations to initiate an appeal even when they are not demonstrably served delivery or retail services by a particular office. The closing of a single Post Office is a local issue, and Section 404(d) identifies a "person served by such [Post Office]" as the full range of those with standing to bring an appeal. Entities other than customers, such as labor organizations, employees, elected officials, and issue advocates all have distinct forums for addressing their view of management decisions; their involvement in a Post Office discontinuance appeal would not contribute to effective resolution of an appeal involving essentially local questions of local access to postal services.

The Postal Service accordingly favors revision of Proposed Rule 3025.14(a) to clarify that only customers may appeal a decision to discontinue a Post Office. The Appendix contains conforming changes that reflect these concerns.

VI. Relocation

The Commission proposes rules to clarify that Section 404(d) procedures do not apply to the relocation of a Post Office within the same community. The Postal Service supports the clarification to the extent it is consistent with 39 C.F.R. § 241.4, but opposes any language addressing the number of Post Offices within a community.¹⁶ The Postal Service favors part of the Commission's proposed definition of "relocate" in Proposed Rule 3025.1(d), and favors a definition consistent with the Postal Service's view that a relocation occurs when the locus of a particular service (or group of services) is changed within a community. Relocation concerns the transfer of service access within a community, thus replicating all service access previously available or meeting local demand for service in the community suffices; the number of brick and mortar facilities used to provide service within a community is not dispositive of whether a relocation has occurred. Accordingly, the proposed rule's inclusion of language regarding the number of Post Offices within a community should be omitted.

VII. Standard of Review

The Commission's Proposed Rule § 3025.20 would provide that, "a petitioner or commenter may dispute factual matters or conclusions drawn in the administrative record." The genesis of this proposal is difficult to discern, especially because it implies facts cannot currently be challenged. A court's or agency's review of an underlying decision includes a determination of whether the agency action is "unsupported by substantial evidence." 5 U.S.C. 706; 39 U.S.C. § 404(d)(5)(C). A factual challenge can

¹⁶ As the Commission is seeing in Docket No. N2011-1, how customers access services is undergoing fundamental change resulting in under utilization of brick and mortar facilities. The Commission's recognition in its discontinuance regulations that relocation does not necessarily constitute a section 404(d) is accordingly constructive.

be used to illustrate how the ‘substantial record evidence’ standard of review operates. If its vitality is not confirmed in some way by the administrative record then the finding lacks substantial record evidence. The same can be true of the ‘arbitrary and capricious’ standard. 39 U.S.C. § 404(d)(5)(A). Under either standard, if a fact recited in the underlying decision is challenged, one examines whether the fact or conclusion is documented or supported in the administrative record, which is the factual foundation for an appellate body’s review. Creating facts out of thin air could be arbitrary and capricious and also lack substantial record evidence support. If a factual conclusion is found to contain error, the next question would usually be its materiality. Recent “A” series docket decisions have not appeared to have problems analyzing disputes over factual matters, so why the Commission perceives a need to add this rule is difficult to understand.

The Commission does not explain its understanding of the requirements necessary for contesting factual matters pursuant to this proposed rule, the *status quo ante*, or whether this proposed rule differs from the Administrative Procedure Act standards or current Commission practice. Publication of the proposed rule in its current form would likely cause substantial confusion regarding evidentiary procedures, particularly where it is invoked by *pro se* litigants. Accordingly, the Postal Service urges the removal of this sentence.

VIII. Participants Supporting the Postal Service

Commission Proposed Rule § 3025.42 addresses the due date for the Postal Service response to a participant statement; oddly, it applies to the Postal Service and “any other participant supporting the Postal Service.” In the Postal Service’s

experience, a party rarely gives its full support to postal management's determination in any Commission proceeding, including those pursuant to Section 404(d). The inclusion of third parties defined by a conclusion regarding the position or positions each takes in litigation in this rule concerns the Postal Service.

One can understand a Commission preference that parties clearly align themselves with one side or the other in a proceeding, at least if only binary possibilities exist. In such circumstances, those 'for' and 'against' each other would file pleadings in synchrony with others on the same side. But rarely do participants actually line up so neatly.

If this Commission proposal were accompanied by illustration of the problem it is trying to resolve, and/or comparison to other federal agencies experiencing related problems, this proposal might be more readily understood. But litigation is complicated and this proposal seems to invite further confusion. Are participants supposed to decide what due date to use based on their alignment with or against the Postal Service regarding a particular issue, the ultimate issue, or some combination? If a participant appears to choose incorrectly, can the timeliness of their pleading be challenged on that basis by third parties? If, as is common in Section 404(d) proceedings, a party supports generally what the Postal Service has determined to do, but would prefer to see it some somewhat differently, what is its filing deadline?

Accordingly, the Postal Service recommends the removal of the reference to "any other participant supporting the Postal Service" in Proposed Rule § 3025.42.

IX. Federal Register Notice

The Commission proposes to eliminate the requirement for publishing notice of each Section 404(d) appeal in the *Federal Register*. The Postal Service understands that this proposal may be animated by an interest in cost avoidance; since Commission funds come from the Postal Service, it is especially sympathetic to the proposal. Given the need for public agencies to promote transparency, one can understand why the Commission's general practice is to notice each matter it is required to or chooses to consider through publication in the *Federal Register*. Counsel understands that the Commission notices essentially all matters it considers formally, whether they are identified as involving rates, mail classification, formal complaints, rulemakings, public inquiries, appeals under Section 404(d), contracts to study, advisory opinions, or otherwise.

We note that Section 404(d) adjudications are generally not of wide interest. Such dockets can be launched by a single letter from a single customer who then chooses not to participate any further. *See, e.g., Unionville, Iowa Post Office*, PRC Docket No. A2011-25 (single page customer letter filed July 11, 2011 is the only pleading not filed by the Commission, its public representative, or the Postal Service). At the other end of the range, cases can entail numerous petitioners who actively contest everything the Postal Service asserts and even those that it does not assert. On an annual basis, such cases tend not to be very numerous; years with 10 or more cases are rare in the last decade or so; in FY2011, however, 103 appeals were filed. Retail Access Optimization, PRC Docket N2011-1, however, would seem to portend

that the number of cases will remain high in the foreseeable future (so the financial consequences of *Federal Register* publication loom still larger).

In sum, the Postal Service is favorably disposed to support this proposal; however, the Postal Service seeks confirmation that procedural schedules will still be issued in each docket.

X. First-Class Mail Notice

In substantially all Commission proceedings, documents are served by the filing party upon all other participants simply by filing electronically; the appearance of a pleading on the Commission's website is deemed service on others. Rule 12(a)(1), 39 C.F.R. § 3001.12(a)(1). When the Commission updated its rules to reflect the new age of electronic filing, it also considered what to do for those participants who are unable or unwilling to use electronic tools for filing documents, and receiving notice of, and copies of, other participants' pleadings. It first proposed to have the Postal Service shoulder that burden, but after reviewing comments of all participants, the Commission concluded this was a burden it could shoulder itself. See Rule 12(a)(2). This eminently reasonable and efficient procedure has apparently worked well (given the absence of concern expressed in docket documents). The Commission's ushering of its official business and the communication necessities underlying it into the information age has been a most welcome development.

Regular users of the Commission's electronic filing procedures can obtain accounts that allow the secure filing of pleadings. First time users can obtain a temporary account immediately; a permanent account requires further interaction with the Commission's docket section. All such interaction is transparent to regular

participants in Commission proceedings since all pleadings appear on the daily listing page regardless of origin. Indeed, one cannot discern how documents are filed, whether via temporary or permanent account, or filed in hard copy and then scanned to appear on the daily listings page.

Into this context, the Commission's proposed rules for "A" series dockets introduce two surprises. First, Proposed Rule 3025.21, *Filing of the administrative record*, provides that "The Postal Service shall notify participants who do not file electronically of the filing of the administrative record ... by First-Class Mail."¹⁷ While at one level it is easy to understand that work is work, and with the Commission's resources now strained with a record number of cases, less work is better. But this rule has two fundamental flaws. First, the Commission alone administers accounts for accessing Filing Online. No participant, including the Postal Service, has any visibility into how and when that administration occurs, its frequency, or what particular challenges that administrative task necessitates. Nor does any participant know who can or cannot file electronically or when changes in that status occur. If based only on what Petitioners themselves recite in "A" series dockets, it appears that most are conversant with and capable of web monitoring, and utilizing web tools.

The second flaw underlying the new requirement of notifying petitioners of the filing of the administrative record is that petitioners, of all people, are usually quite familiar with the administrative record, its content and its location. It is available wherever a copy of the final determination is posted, often two or three local postal facilities. It is also available while formal proposals are posted earlier in the

¹⁷ The proposed rule is unclear whether the requisite Notice is also supposed to be accompanied by a copy of the administrative record (which can run to several hundred pages).

discontinuance process for a period of 60 days in the same locations where final determinations are posted.

Proposed Rule 3025.22 compounds what the Postal Service sees as error: it specifies that the Postal Service is obliged to notify “petitioners and commenters” by First-Class Mail of the location(s) (other than the Commission offices) where the filings may be inspected. As previously noted, customers sufficiently involved in a discontinuance matter to file or follow an appeal are already quite aware of where the administrative record is available;¹⁸ docket documents are posted in the same location. Postal counsel is especially diligent in making sure that all pleadings in a given docket are posted promptly in all locations where final determinations were originally posted—and remain posted throughout the pendency of an appeal.

The Postal Service opposes parts of both rules 21 and 22. The Commission’s Secretary is today responsible for addressing the gap between electronic and hard copy participants; since knowledge of who is and who is not a hard copy participant—and status changes over time as they may occur—is a condition precedent to management of this gap, knowledge uniquely available to Commission staff, the Postal Service would note that the Secretary is far better positioned to be efficient in communicating with hard copy filers. For that matter, the Commission may also be capable of creating a new type of account that makes it easier for petitioners to become users of electronic tools; if that is a reasonable or good option, only the Commission has the information necessary to its evaluation.

¹⁸ If notifying petitioners and commenters where the administrative record can be reviewed is really a gap that needs filling, it can include a standard recitation of where posting occurs in what it sends back to them or the Commission can also note standard locations in its scheduling order. This and the preceding footnote illustrate some confusion on the Postal Service part of the problem being addressed.

The Postal Service has no trouble agreeing to make sure that all pleadings in a given case are posted and thereby made available in affected offices; it does so today and agrees that is an appropriate mechanism for advising those lacking electronic capabilities to keep up with what is happening in a given docket. But sending a letter to petitioners and commenters would not be constructive. As noted, customers know where the Postal Service posts documents in respective appeals. The discontinuance procedures already define “affected offices” where posting takes place. These can include the retail facility under study, the retail facility proposed to serve as the supervising facility, and any facility likely to serve a significant number of customers of the retail facility under study. See Postal Service Handbook PO-101 § 352.1 (listing facilities included in term “affected facilities”).

Rule 22 further attempts to deviate from the accepted use of “affected offices” by pointing instead to the “nearest [p]ost [o]ffice.” Almost invariably that office would be encompassed by “affected offices”; counsel can recall one case in Oregon where that was not the case (one in which disappointed investors in would-be resort land were angered by the discontinuance of the Post Office and with it apparently their dreams of riches; certain of those petitioners had no trouble mixing some prevarication into their claims so as to paint a picture of confusion). The Postal Service would submit that writing regulations to address situations rarely or almost never encountered constitutes needless rulemaking procedure. These rules should accordingly revert to Postal Service regulations’ use of the term “affected offices” while leaving the Commission’s Secretary with responsibility for dealing with hard copy filers. A better understanding of the problem being addressed might also allow other types of solutions to be crafted.

These Commission proposed rules would increase the burden of service and transfer some of the service obligation now borne by its Secretary to the Postal Service. Such changes are neither warranted nor appropriate, and should therefore be dropped.

XI. Discontinuance Language

The Postal Service proposes to change use of the terms “closing” or “consolidation” to the term “discontinuance” throughout the Commission proposed rules. This simplification will make the proposed rules more consistent with 39 C.F.R. § 241.3 and the Postal Service Handbook PO-101.

XII. Deadlines for Appeal

Proposed Rule 3025.13 addresses the deadlines applicable to Post Office discontinuance appeals. The Postal Service supports this proposed rule and believes that it is consistent with the Postal Accountability and Enhancement Act of 2006 (PAEA) amendments to 39 U.S.C. § 404.

XIII. Duration of Appeal Process

The Commission’s proposed rules, considered as a whole, provide for a condensed Post Office discontinuance appeal schedule. Section 404 grants the Commission 120 days to decide a Post Office discontinuance appeal, but in its proposed rules, the Commission expresses an intent to issue Post Office discontinuance appeal decisions within 75 days of the date an appeal is filed. The Postal Service supports the proposed shortening of the procedural schedule for Post Office discontinuance appeals, and recognizes that the shorter schedule promotes

administrative efficiency.¹⁹ Under the proposed schedule, it will likely be easier for the Postal Service to manage the discontinuance process, and the complications associated with contracts, leases, and staffing that arise from the unpredictability engendered by the lodging of appeals.

XIV. Oral Argument

The proposed rule proposes to remove the existing rule of practice providing for oral argument. The Commission explains that its experience with appeals of Post Office closings and consolidations reveals that written pleadings provide sufficient bases for decisions. The Postal Service supports this change as a measure that serves the interests of administrative efficiency, and notes that the procedures employed to date have been effective in protecting appellants' right to be heard.

¹⁹ Based on recent discontinuance cases, the Postal Service is able to project occasional, short term problems with assembling the administrative record for filing within ten days. Especially if many petitioners are hard copy filers, giving them only seven days to respond to a Postal Service pleading may prove a challenge. Neither of these warrants changes to the proposed rules since the Commission can manage this on a case-by-case basis.

Conclusion

The Postal Service respectfully submits these Comments and urges the Commission to adopt the suggested changes in the attached Appendix.

Respectfully submitted,

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APPENDIX

TITLE 39, CODE OF FEDERAL REGULATIONS CHANGES (Additions are underlined and deletions are marked with ~~strikethrough~~.)

Paragraph 3001.9(a) is amended by adding the following sentence at the end thereof:
The requirements of this paragraph do not apply to participants other than the Postal Service in proceedings conducted pursuant to Part 3025.

Section 3001.10(b) is amended by revising redesignated paragraph (b) by removing “Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived.”

Section 3001.10 is amended by adding the following paragraph (d):

(d) *Exception for appeals of ~~p~~Post ~~o~~Office ~~c~~losings and consolidations ~~discontinuance actions~~.* The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to Part 3025.

Paragraph 3001.12(a) is amended by adding the following subparagraph (3):

(3) In proceedings conducted pursuant to Part 3025, the Secretary will serve documents (except an administrative record) on participants who do not use Filing Online. Service will be by First-Class Mail.

Paragraphs 3001.17(b)(1) and (2) are amended by replacing “subpart H” with “part 3025” in each.

Subparagraphs 3001.17(a)(1) and (2) are amended by redesignating subparagraphs (a)(3), (4), and (5) as (a)(1), (2), and (3), respectively and;

· Revising redesignated subparagraph (a)(2) by changing “subpart E of this part” to “part 3030 of this chapter”;

- Revising redesignated subparagraph (a)(3) by changing “to institute any other proceeding under the Act.” to “it is appropriate.”;
- Removing paragraph (b) and redesignate paragraphs (c) and (d) as (b) and (c), respectively;
- Revising redesignated paragraph (b) by inserting “and” after “on the Postal Service,” and by striking “, and the appellant in the appeal of a Postal Service determination to close or consolidate a post office”;
- Revising redesignated subparagraph (c)(1) by changing “paragraphs (a) and (b)” to “paragraph (a)”; and
- Revising redesignated subparagraph (c)(3) by inserting “and” after “nature of postal services;”, and by striking “or, in the case of an appeal, an identification of the appellant and a summarization of the Postal Service determination to close or consolidate under review”.²⁰

Part 3001, subpart H, is repealed.

A new Part 3025, Rules for Appeals of Postal Service Determinations to ~~Close or Consolidate~~ Discontinue Post Offices, is adopted as follows:

²⁰ The Postal Service interprets Order 823 to revise 3001.17 to read as follows:

- a) When issued. The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:
 - (1) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;
 - (2) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to part 3030 of this part; or
 - (3) The Commission in the exercise of its discretion determines it is appropriate.
- (b) Publication and service of notice. Each notice of proceeding shall be published in the *Federal Register* and served on the Postal Service and the complainant in a complaint proceeding,
- (c) Contents of notice. The notice of a proceeding shall include the following:
 - (1) The general nature of the proceeding involved in terms of categories listed in paragraph (a) of this section;
 - (2) A reference to the legal authority under which the proceeding is to be conducted;
 - (3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, proposals for changes in the nature of postal services and in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint;
 - (4) The date by which notices of intervention and requests for hearing must be filed; and
 - (5) Such other information as the Commission may desire to include.

§ 3025.1 Definitions. The following definitions apply in this Part 3025:

- (a) “Final determination” means the written determination and findings required by 39 U.S.C. § 404(d)(3).
- (b) “Administrative record” means all ~~documents and materials created by the Postal Service or made available by the public to the Postal Service for its review in anticipation of the action for which review is sought.~~ evidence considered by the Postal Service in making its determination.
- (c) “Petitioner” means a person who files a document that the Commission accepts as an appeal of a ~~pPost eOffice closing or consolidation~~ discontinuance.
- (d) ~~“Post office” means a Postal Service operated retail facility.~~
- (ed) “Relocate” means that the location of a ~~post office~~ where a particular postal service is offered changes to another location within a community ~~changes, but the total number of post offices within the community remains the same or increases.~~

§ 3025.2 Applicability.

- (a) The rules in this part apply when (1) the Postal Service decides to ~~close or consolidate~~ discontinue a ~~pPost eOffice~~, and (2) a patron of that ~~pPost eOffice~~ wants to appeal ~~the closing or consolidation~~ discontinuance.
- (b) The following rules in Part 3001, subpart A apply to appeals of ~~pPost eOffice closings or consolidations~~ discontinuance actions: rules 1-9, 11-17, and 20-22.
- (c) This part does not apply when the Postal Service relocates a ~~pPost eOffice~~ within a community.

§ 3025.3 ~~Notice by the Postal Service.~~

~~(a) — *Notice of proposal to close or consolidate a post office.* If the Postal Service proposes to close or consolidate a post office, it must give persons served by that post office notice of its intent to close or consolidate. This notice must be adequate to reasonably inform patrons that they may comment on the proposed closing or consolidation, how and where the comments may be submitted, and when the comments are due.~~

~~(b) — *Notice of final determination to close or consolidate a post office.* When the Postal Service makes a final determination to close or consolidate a post office, it must give notice to persons served by that post office. The notice must be adequate to reasonably inform them that they may file an appeal with the Postal Regulatory Commission (www.prc.gov) within 30 days of the final determination's being made. Notice must be prominently displayed at the post office to be closed or consolidated and at the facility(s) expected to provide replacement service.~~

~~(c) — If a post office to be closed or consolidated is suspended, the Postal Service must notify patrons (both delivery and retail) by First-Class Mail of both the proposal to close or consolidate and the final determination.~~

§ 3025.10 Starting an appeal.

(a) A Postal Service decision to ~~close or consolidate~~ discontinue a pPost eOffice may be appealed by a person served by that office. An appeal is begun by notifying the Postal Regulatory Commission in writing. Such a notification is known as a Petition for Review.

(b) The Petition for Review must state that the person(s) submitting it are served by the pPost eOffice that the Postal Service has decided to ~~close or consolidate~~ discontinue. The petition should include the name(s) and address(es) of the person(s) filing it, and the name or location of the pPost eOffice to be closed discontinued and the date on which the decision was posted. A petitioner may include other information deemed pertinent.

§ 3025.11 Transmitting an appeal.

A Petition for Review may be sent by mail or electronically through the Commission's website, *www.prc.gov*. Petitions for review may also be brought to the Commission's offices at 901 New York Avenue, NW, Suite 200, Washington DC 20268-0001.

§ 3025.12 Duplicate appeals.

If the Commission receives more than one Petition for Review of the same ~~Post Office closing or consolidation~~ discontinuance, the petitions will be considered in a single docket.

§ 3025.13 Deadlines for appeals.

(a) *In general.* If the Postal Service has issued a final determination to ~~close or consolidate~~ discontinue a ~~Post Office~~, an appeal is due within 30 days of the final determination's being posted and made available in accordance with Postal Service procedures made available in conformance with section 3025.3(b).

(b) *Appeals sent by mail.* If sent by mail, a Petition for Review must be postmarked no later than 30 days after the final determination has been made available.

(c) *Appeals sent by other physical delivery.* If sent by some other form of physical delivery, a Petition for Review must be received in the Commission's docket section no later than 4:30 pm on the 30th day after the final determination has been made available.

(d) *Appeals sent electronically.* If submitted electronically, a Petition for Review must be received in the Commission's docket section no later than 4:30 pm on the 30th day after the final determination has been made available.

§ 3025.14 Participation by others.

(a) Any person (1) served by a ~~p~~Post ~~e~~Office to be closed or consolidated ~~discontinued~~; or (2) with a demonstrable interest in the closing or consolidation may participate in an appeal. A person may participate in an appeal by sending written comments to the Postal Regulatory Commission in the manner described in section 3025.11.

(b) Persons may submit comments in support of petitioner or in support of the Postal Service in accordance with the deadlines established in this Part. Commenters may use PRC Form 61, which is available on the Commission's website, *www.prc.gov*.

§ 3025.20 The record on review.

The record on review includes:

- (1) the final determination;
- (2) the notices to persons served by the ~~p~~Post ~~e~~Office to be closed or consolidated ~~discontinued~~;
- (3) the administrative record; and
- (4) all documents submitted in the appeal proceeding; ~~and~~
- (5) ~~facts of which the Commission can properly take official notice.~~

~~However, a petitioner or commenter may dispute factual matters or conclusions drawn in the administrative record.~~

§ 3025.21 Filing of the administrative record.

The Postal Service shall file the administrative record within 10 days of the date of posting of a Petition for Review on the Commission's website. The Commission may alter this time for good cause. The ~~Postal Service~~ Commission shall notify participants who do not file electronically of the filing of the administrative record. Such notification shall be made by First-Class Mail.

§ 3025.22 Making documents available for inspection by the public.

Copies of all filings (including the administrative record) related to an appeal shall be available for public inspection at the ~~pPost eOffice~~ whose ~~closure or consolidation~~ discontinuance is under review. If that ~~pPost eOffice~~ has been suspended or closed, the filings shall be available at the ~~nearest open pPost eOffice(s)~~ providing alternate service. The ~~Postal Service Commission~~ must notify all petitioners and commenters of the location(s) (other than the Commission offices) where the filings may be inspected. Such notification shall be made by First-Class Mail.

§ 3025.30 Suspension pending review.

A final determination to ~~close or consolidate~~ discontinue a ~~pPost eOffice~~ is may be suspended until final disposition by the Commission when a person files a timely Petition for Review. Should the Postal Service be unable to suspend final disposition, it shall so advise the Commission.

§ 3025.40 Participant statement.

When a timely Petition for Review of a decision to ~~close or consolidate~~ discontinue a ~~pPost eOffice~~ is filed, the Secretary shall furnish petitioner with a copy of PRC Form 61. This form is designed to inform petitioners on how to make a statement of his/her arguments in support of the petition. The instructions for Form 61 shall provide:

- (1) a concise explanation of the purpose of the form;
- (2) a copy of section 404(d)(2)(A) of title 39, United States Code; and
- (3) notification that, if petitioner prefers, he or she may file a brief in lieu of or in addition to completing PRC Form 61.

§ 3025.41 Due date for participant statement.

The statement or brief of petitioner, and of any other participant supporting petitioner, shall be filed not more than 20 days after the filing of the administrative record.

§ 3025.42 Due date for Postal Service response.

The statement or brief of the Postal Service, ~~and of any other participant supporting the Postal Service,~~ shall be filed not more than 14 days after the date for filing of petitioner's statement.

§ 3025.43 Due date for replies to the Postal Service.

Petitioner, and any other participant supporting petitioner, may file a reply to the Postal Service response not more than 7 days after the date of the Postal Service response. Replies are limited to issues discussed in the Postal Service's response.

EXHIBIT 1



Postal Service Customer Questionnaire

Your responses to the following questions are important to the US Postal Service and will be considered in the feasibility study for the Acampo Post Office. Please take a few minutes to complete this survey and return it no later than 08/03/2011 in the postage-paid envelope provided.

The study consists of a publicly available record, so please be advised that any information that you furnish will be visible to others.

1. Did you visit the Acampo Post Office for personal reasons, business-related reasons, or both?

- Personal reasons Business-related reasons Both

2. Please check the appropriate box to indicate whether you used the Acampo Post Office for each of the following:

Postal Services	Daily	Weekly	Monthly	Never
a. Buying Stamps	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Mailing Letters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Mailing Parcels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Pick up Post Office box mail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Pick up general delivery mail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Buying money orders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Obtaining special services, including Certified Mail, Registered Mail, Insured Mail, Delivery Confirmation, or Signature Confirmation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Sending Express Mail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Sending Priority Mail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Carrier pickup	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Buying stamp-collecting material	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Entering permit or bulk mailings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Obtaining other federal agency forms (e.g., Selective Service, Duck Stamps, Passport Applications)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. School bus stop	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Assisting senior citizens, persons with disabilities, etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Public bulletin board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q. Community gathering place	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Did you ever use any of the following alternative methods to conduct business with the Postal Service?

- | | | |
|--|------------------------------|-----------------------------|
| Post Office in vicinity of where you work or shop | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| usps.com website | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Stamps by Mail | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Stamps by Phone | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Stamps Online | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Click-N-Ship | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Buy stamps or mail packages at grocery or other retail store | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

4. Do you currently use local businesses in the community?

Yes No

5. If you answered "yes" in Question 4, would you continue to use these businesses if the Acampo Post Office is discontinued?

Yes No

6. Do you currently use businesses in nearby communities?

Yes No

7. Do you have a means of transportation available to get to another Post Office in the vicinity?

Yes No

8. How do you currently receive your mail?

Carrier PO Box Other

Additional Comments:

Name: _____

Address: _____

City, State Zip: _____

Summary of Postal Service Retail Facility Change Regulations

Certain regulations based on federal law apply when postal managers propose to replace a Post Office with an alternate form of postal service. These regulations are designed to ensure that the reasons for proposing such changes in postal service are fully disclosed at a stage when customers can make helpful contributions toward a final decision. The full text of the statutory provisions appears in Title 39, *United States Code*, Section 404(b), while the implementing regulations appear in Title 39, *Code of Federal Regulations*, Part 241.3.

According to implementing regulations, an initial investigation and any subsequent formal proposal to discontinue a Post Office originate with postal field managers responsible for Post Offices in that area. The proposal must explain the services recommended as substitutes and the rationale that supports this recommendation. The written proposal is prominently posted for 60 days at affected Post Offices, along with an "Invitation for Comments," which formally invites customer comments. At the end of the 60-day comment period, additional review is made at lower and upper levels of postal management.

When a final decision is made at Postal Headquarters in Washington, DC, that decision is posted in affected Post Offices for 30 days, during which customers may appeal the decision to the Postal Regulatory Commission in Washington, DC. The Postal Regulatory Commission has 120 days to consider and decide an appeal. Even without an appeal, no Post Office may be closed sooner than 60 days after the public posting of the final decision.

